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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,430	03/30/2001	Pamella A. Costello	COSTEL 3.0-001	8754

530 7590 03/06/2003

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EXAMINER
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NGUYEN, ANTHONY H

ART UNIT	PAPER NUMBER
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2854

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/823,430

Applicant(s)

COSTELLO, PAMELLA A.

Examiner

Anthony H Nguyen

Art Unit

2854

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 U.S.C. § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the scope of the claim is unclear since the preamble of the claim appears to recite a method of avoiding the transmission of disease carrying organisms. However, the step of avoiding the transmission of disease carrying organism is not cited. Note that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Therefore, the claimed language appears to be improper since no step for performing the desired step is provided and the scope of the claim is unclear.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Nopper et al. (US 5,021,638) in view of LEBEAU et al. (US 2001/0041088 A1).

Nopper et al. teaches the keyboard cover having substantially the structure and method as claimed. For example, Nopper et al. teaches a keyboard cover 24 having a top panel 28, a vertical side, front and rear panels as shown in Figs.3 and 3a of Nopper et al.

Nopper et al. fails to teach the top panel which does not correspond to the depressions or elevation of a specific keyboard array.

However, LEBEAU et al. teaches a keyboard cover 23 having a top panel (no numeral reference) which does not correspond to the depressions or elevations of a keyboard 20 (LEBEAU et al., Figs .6 and 7).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the keyboard of Nopper et al. by providing the top panel as taught by LEBEAU et al. for reducing cost of manufacture of a keyboard cover. With respect to claim 6, the use of keyboard cover having side panels which has less elasticity than the a top panel is well known in the art. With respect to claims 10-14, the selection of a desired material for forming the cover involves only an obvious matter of design choice based upon obvious experimentation.

### *Response to Arguments*

Applicants' arguments filed on December 17, 2002 have been fully considered but they are not persuasive of any error in the above rejection.

Applicant argues that claim 19 is proper since the method involves having each user uses their own personal keyboard cover prior to use the keyboard.

However, the claim fails to provide any step for performing the desired method therefore the scope of the claim is unclear.

Applicant argues that Nopper et al. and Phillippe fail to teach the keyboard cover as recited in the newly amended claims.

However, as explained above, the combination of Nopper et al. and LEBEAU et al. renders obvious the protective enclosure or cover for a keyboard assembly as broadly recited.

Applicant argues that a keyboard cover having differential property such as the top panel of the keyboard cover having greater elasticity than the side panels is unknown in the art.

Note that Nopper et al. teaches the use of an obverse face overlaying or a plate 40 which is made of metal or plastic as shown in Fig.3a (see col.4 lines 43-50). Additionally, the prior art of record, Matone (US 4,758,712) shows a protective keyboard assembly 30 having a top panel 60 which has more elastic than the side panels which can be made of steel, aluminum or plastic which clearly have less elasticity than the top panel (see Matone, Figs.1 and 3, and col.3, first and second paragraph).

Therefore, it is believed that the rejections are proper since there is no apparent unobviousness in the structure as recited in claims relative to the structure of the prior art as applied.

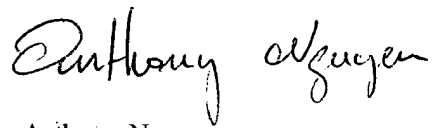
### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Nguyen whose telephone number is (703) 308-2869. The examiner can normally be reached daily from 9 AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Hirshfeld, can be reached on (703) 305-6619. The fax phone number for this Group is (703) 308-7722.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

A handwritten signature in black ink, appearing to read "Anthony Nguyen". The signature is fluid and cursive, with the first name "Anthony" written in a larger, more prominent script than the last name "Nguyen".

Anthony Nguyen

3/5/03

Patent Examiner

Technology Center 2800